

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

734 AGRICULTURE, LLC, a Delaware
limited liability company, RCF 2014 LEGACY,
LLC, a Delaware limited liability company,
DELTA OFFSHORE MASTER II, LTD., a
Cayman Islands exempted company, and
REMY W. TRAFELET, an individual,

Plaintiffs,

v.

Case No.: 18-CA-011294
Division: L

GEORGE R. BROKAW, an individual,
HENRY R. SLACK, an individual, W.
ANDREW KRUSEN, JR., an individual,
GREG EISNER, an individual,

Defendants.

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

Defendants, George R. Brokaw, Henry R. Slack, W. Andrew Krusen, Jr., and Greg Eisner (collectively, "Defendants" or "Defendant Board Members"), by counsel and pursuant to Rule 90.202(6), Florida Evidence Code, request that this Court take judicial notice of the records of the Delaware Court of Chancery in the cases styled:

- *Arlon Valencia Holdings, LLC, et al v. Remy Trafelet, et al.*, C.A. No. 2018-0842-JTL; and
- *734 Agriculture, LLC v. Arlon Valencia Holdings LLC, et al.*, C.A. No. 2018-0844-JTL.

Copies of the complaints filed in each of the referenced matters are attached hereto as Exhibit A and Exhibit B, respectively.

Date: November 27, 2018.

/s/ William J. Schifino, Jr.

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*Attorneys for Defendants George R. Brokaw, Henry
R. Slack, W. Andrew Krusen Jr., and Greg Eisner.*

CERTIFICATE OF SERVICE

I CERTIFY that on November 27, 2018, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record.

/s/ William J. Schifino, Jr.

Exhibit A



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ARLON VALENCIA HOLDINGS, LLC,
GLENN DUBIN 734 INVESTORS GRAT,
RINYAMI, LLC, RIO VERDE VENTURES,
LLC, JAKE86 LLC, ARC PARTNERS,
LLC, ADK SOHO FUND, LP, DWIGHT
PLACE CAPITAL, LLC, CRAIG LUCAS,
GEORGE BROKAW,

Plaintiffs,

v.

REMY TRAFELET, 734 AGRICULTURE,
LLC,

Defendants,

and

734 INVESTORS, LLC

Nominal Defendant.

VERIFIED COMPLAINT

1. This is an action seeking declarations on behalf of the majority economic owners of a Delaware limited liability company, 734 Investors LLC, which owns 42.7% of Alico, Inc., a publicly traded Florida corporation. Plaintiffs, who collectively hold 57.9% of the membership interests of 734 Investors, LLC, seek a declaration that the previous Managing Member, defendant 734 Agriculture,

LLC (which is managed by defendant Remy Trafelet), was properly removed and replaced as the Managing Member by written consent of members representing 92.2% of the unaffiliated membership interests under 734 Investors' LLC agreement. Plaintiffs also seek a declaration that the previous action by the prior Managing Member purporting to cause 734 Investors to execute a written consent removing and replacing directors of Alico, Inc., including directors who themselves are members of 734 Investors and own a greater stake in the LLC than Defendants, was invalid under 734 Investors' LLC agreement and otherwise unenforceable in law or in equity.

PARTIES AND RELEVANT NON-PARTIES

2. Nominal Defendant 734 Investors, LLC ("734 Investors") is a limited liability company organized under the laws of Delaware. 734 Investors beneficially owns approximately 42.7% of the outstanding common shares of Alico, Inc. ("Alico"), a corporation organized under the laws of Florida. Alico's principal business is citrus production, and its shares are publicly traded on the NASDAQ global select market. 734 Investors' principal assets are the shares of Alico common stock which it beneficially owns (the "734 Investors Alico Shares"). 734 Investors is governed by an Amended and Restated Limited Liability Company Operating Agreement, dated November 15, 2013 (the "LLC Agreement," attached as **Exhibit A**). Section 10.04 of the LLC Agreement

provides that the LLC Agreement is governed by and construed in accordance with Delaware law, and provides that any action brought under the LLC Agreement shall be brought in this Court.

3. Plaintiff Arlon Valencia Holdings, LLC (“Arlon”) is a limited liability company organized under the laws of Delaware, and it holds an approximately 25.2% membership interest in 734 Investors. Arlon was named Managing Member of 734 Investors on November 19, 2018.

4. Plaintiff Glenn Dubin 734 Investors GRAT is a grantor retained annuity trust organized under the laws of New York, and it holds an approximately 12.2% membership interest in 734 Investors.

5. Plaintiff Rinyami, LLC is a limited liability company organized under the laws of Delaware, and it holds an approximately 4.1% membership interest in 734 Investors.

6. Plaintiff Rio Verde Ventures, LLC, is a limited liability company organized under the laws of Florida, and it holds an approximately 4.1% membership interest in 734 Investors.

7. Plaintiff Jake86 LLC holds an approximately 4.1% membership interest in 734 Investors.

8. Plaintiff ARC Partners, LLC is a limited liability company organized under the laws of Florida, and it holds an approximately 3.6% membership interest in 734 Investors.

9. Plaintiff ADK Soho Fund, LP is a limited partnership organized under the laws of New York, and it holds an approximately 1.6% membership interest in 734 Investors.

10. Plaintiff Dwight Place Capital, LLC is a limited liability company organized under the laws of New Jersey, and it holds an approximately 1.6% membership interest in 734 Investors.

11. Plaintiff Craig Lucas holds an approximately 1.6% membership interest in 734 Investors.

12. The above plaintiffs together own approximately 57.9% of the outstanding membership interests in 734 Investors, and 72% of the membership interests other than those controlled by Defendants.

13. Defendant 734 Agriculture, LLC (“734 Agriculture”) is a limited liability company organized under the laws of Delaware. 734 Agriculture holds an approximately 19.7% membership interest in 734 Investors and is the former Managing Member of 734 Investors. While serving as Managing Member of 734 Investors, 734 Agriculture had the general authority (subject to restrictions in the LLC Agreement detailed below) to vote the 734 Investors Alico Shares,

despite its ownership of less than 20% of the membership interests in 734 Investors.

14. Defendant Remy Trafelet is the manager of 734 Agriculture, and is the President, Chief Executive Officer, and member of the board of directors of Alico. While Trafelet is the manager of 734 Agriculture, he beneficially owns less than a majority interest in that entity (approximately 43.7%), with the majority being owned by a separate trust and plaintiff George Brokaw. When 734 Agriculture previously served as 734 Investors' Managing Member and could therefore vote the 734 Investors Alico Shares (subject to restrictions in the LLC Agreement detailed below), Trafelet effectively controlled the 734 Investors Alico Shares, in addition to approximately 14.4% of Alico's outstanding common shares which he otherwise controlled. In total, immediately prior to 734 Agriculture's removal as Managing Member of 734 Investors, Trafelet controlled the voting power of approximately 57.4% of the outstanding common shares of Alico, although he held a direct and indirect economic interest of only approximately 18.1% of Alico's outstanding common shares.

15. The Alico board of directors (the "Board") is composed of seven directors.

16. Plaintiff George Brokaw is an Alico director. Brokaw owns a 12.6% membership interest in 734 Agriculture and, in addition to his indirect

economic interest in the 734 Investor Alico Shares, beneficially owns approximately 1.9% of the outstanding common shares of Alico. Brokaw was, along with Trafelet, a managing partner at Trafelet Brokaw Capital Management, L.P. until November 13, 2018, when Brokaw resigned his position.

17. Defendant Trafelet is an Alico director.

18. Non-party Hank Slack is an Alico director and chairman of the Board. Slack is a member of plaintiff Rinyami, LLC.

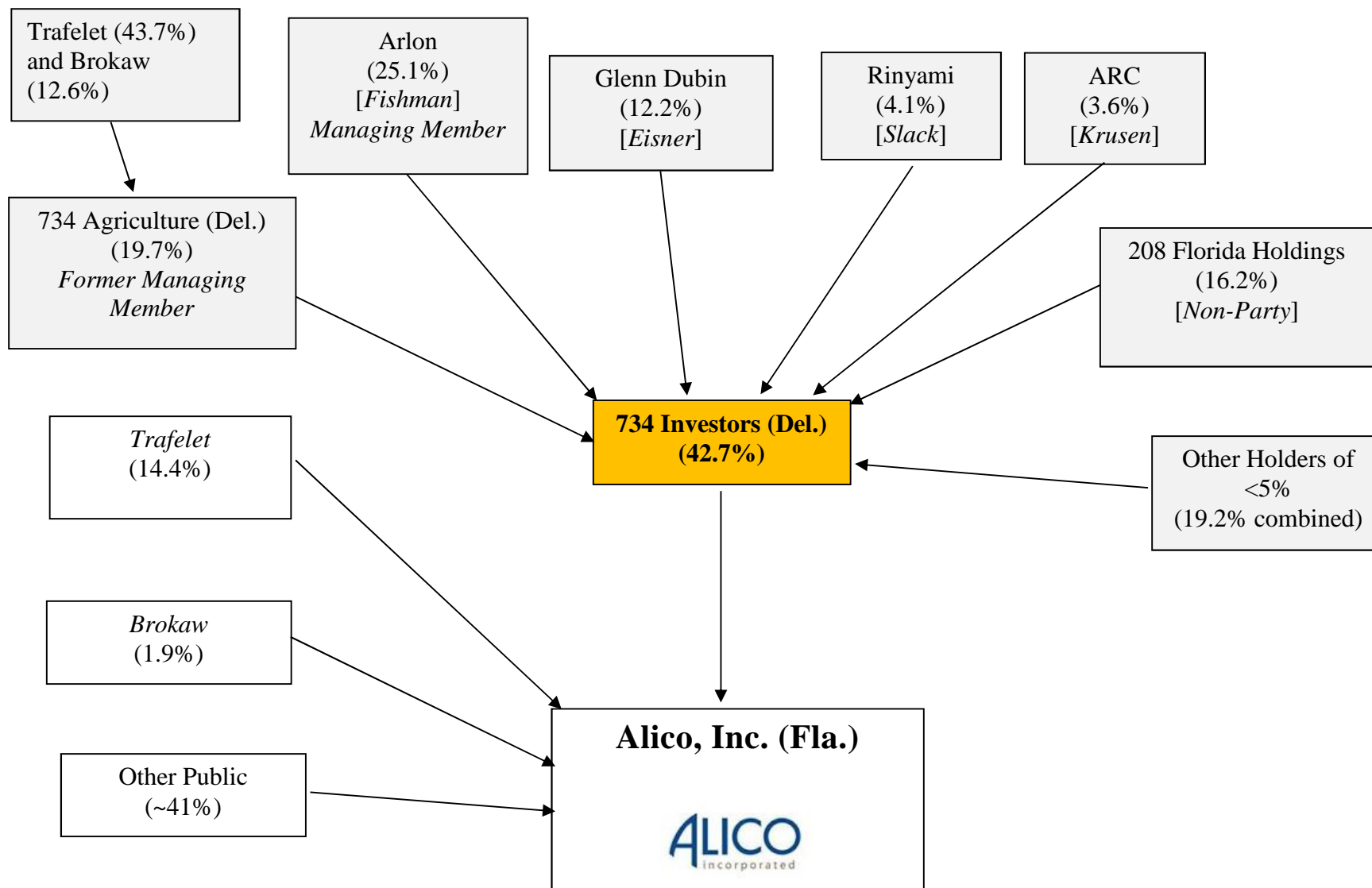
19. Non-party Benjamin Fishman is an Alico director. Fishman is a managing director of Arlon Group, an affiliate of Arlon. Fishman serves as Arlon's designee on Alico's board pursuant to Section 2.11 of the LLC Agreement.

20. Non-party R. Greg Eisner is an Alico director, and he is employed by the trustee of plaintiff Glenn Dubin 734 Investors GRAT.

21. Non-party W. Andrew Krusen, Jr. is an Alico director, and he is the managing member of plaintiff ARC Partners, LLC.

22. Non-party Joseph Sambuco is an Alico director.

23. The ownership structure of Alico is illustrated below:



JURISDICTION

24. This Court has jurisdiction over this action pursuant to 6 *Del. C.* §§ 18-110, 18-111.

25. This Court has personal jurisdiction over the Defendants pursuant to 6 *Del. C.* § 18-109 and Section 10.04 of the LLC Agreement.

BACKGROUND

I. Trafelet and various investors form 734 Investors to acquire Alico stock.

26. 734 Investors was formed in October 2013 as an investment vehicle for Trafelet and Brokaw (through 734 Agriculture) and a consortium of investors to acquire 51% of the then-outstanding shares of common stock of Alico at a price of \$37.00 per share. Upon the closing of the transaction, Brokaw, Trafelet, Krusen, Fishman, Eisner, and Slack were elected to the Board, and Slack was elected Chairman.¹

27. Section 2.01 of the LLC Agreement designates 734 Agriculture as the initial Managing Member of 734 Investors. Because Trafelet controlled 734 Agriculture, Trafelet was effectively the Managing Member of 734 Investors.

28. Section 2.01(a) of the LLC Agreement states that the Managing Member (initially, 734 Agriculture, controlled by defendant Trafelet) has general authority to manage the business and affairs of 734 Investors, including the

¹ Sambuco joined the Board in May 2017.

specific authority to vote the 734 Investors Alico Shares. But anticipating the potential conflicts that might arise between Trafelet and the majority economic owners of 734 Investors, multiple provisions of the LLC Agreement restricted Trafelet's general authority as Managing Member, as well as his specific authority to vote the 734 Investors Alico Shares.

29. For example, Section 2.05 of the LLC Agreement sets forth numerous actions that the Managing Member cannot take without the prior written consent of a majority of the membership interests of 734 Investors. Section 2.05(j) provides that the Managing Member cannot "enter into any material agreement, arrangement or understanding" between 734 Investors or Alico and any member (including 734 Agriculture) or affiliate of a member without such prior written consent. Additionally, Section 2.05(l) provides that Trafelet cannot engage legal counsel for 734 Investors without the same prior written consent of a majority of the membership interests.

30. Further, Section 2.07(a) of the LLC Agreement acknowledges that, as Managing Member, 734 Agriculture and Trafelet owed the other members of 734 Investors an implied duty of good faith and fair dealing, as required by Delaware law.

31. The LLC Agreement also carefully circumscribes the authority of the Managing Member and its affiliates to take individual actions using the 734

Investors Alico Shares in matters that involve a vote (or written consent) of Alico's shareholders.

32. Section 2.08 of the LLC Agreement provides:

In the event that any transaction involving a Company Subsidiary [defined to include Alico] or the stockholders of such Company Subsidiary, on the one hand, and the Managing Member or an affiliate of the Managing Member, on the other hand, is submitted to a vote of the stockholders of such Company Subsidiary, or otherwise requires an action to be taken by the stockholders of such Company Subsidiary (a "Related Party Transaction"), the Managing Member shall vote, or cause to be voted (including by written consent, if applicable) in person or by proxy, all of the Company Securities [defined to include the 734 Investors Alico Shares] of such Company Subsidiary, or shall take such other actions with respect to the Company Securities, in accordance with the direction of the Majority Non-Managing Members

33. In summary, Section 2.08 requires that in any transaction involving Alico or its shareholders, on the one hand, and 734 Agriculture or Trafelet, on the other, which requires Alico's shareholders to vote or otherwise take action, including by written consent (a "Related Party Transaction"), the 734 Investors Alico Shares must be voted as directed by a majority of the disinterested outstanding membership interests.

34. The LLC Agreement also provides for the right of the non-managing members to remove the initial Managing Member and appoint another member as Managing Member. Section 2.02(b) states:

If, at any time, the Managing Member . . . commits any act that constitutes fraud, gross negligence, or willful misconduct in

connection with the management of the Company . . . , in addition to the rights and remedies described in this Agreement or available at law or in equity, the Members, acting by the affirmative vote of the holders of 66% of the Membership Interests held by Members other than the Managing Member may remove the Managing Member as the managing member of the Company and appoint another Member as the managing member of the Company who will succeed to the rights and obligations of the Managing Member under this Agreement.

35. In summary, Section 2.02(b) permits the economic owners of 734 Investors to remove 734 Agriculture (*i.e.*, Trafelet) as Managing Member (i) for “fraud, gross negligence, or willful misconduct in connection with the management of” 734 Investors, and (ii) upon a vote of 66% of the membership interests other than those controlled by 734 Agriculture voting for such removal.

36. Section 6.01(a) of the LLC Agreement provides that 734 Investors will dissolve on November 15, 2019, unless members holding at least 75% of the membership interests vote to postpone the dissolution by one year. Upon dissolution, 734 Investors’ assets (including the 734 Investors Alico Stock) will be distributed to the members *pro rata*, and at that point, whoever is the Managing Member of 734 Investors would thus lose control of the 734 Investors Alico Shares. Accordingly, Trafelet was due to lose control of 734 Investors (and his ability to extract for himself the private benefits of controlling Alico) less than one year after 734 Agriculture was removed as Managing Member.

II. Trafelet becomes CEO and negotiates an option-heavy employment arrangement.

37. A few years after 734 Investors' acquisition of control of Alico, Trafelet became unhappy with Alico's management team and pushed out Alico's CEO. Trafelet advocated that the Board of Alico name him CEO and that he receive a lucrative compensation package. The Board ultimately approved Trafelet becoming Alico's CEO as part of a management structure whereby Trafelet, Slack, and Brokaw would each assume executive roles at Alico with additional responsibilities.

38. In early 2016, Trafelet, Slack, and Brokaw each began negotiating employment agreements (including equity compensation arrangements) with the Board's compensation committee (the "Compensation Committee"). Eisner and Krusen—both independent directors—composed the Compensation Committee, and they retained independent advisors.

39. The negotiations over Trafelet's employment agreement and compensation were contentious. Trafelet insisted on a private equity-style compensation structure where he and Alico's management team would receive 20% of Alico's equity—even though Alico was a public company, and Trafelet would not serve as Alico's CEO full-time. To implement this structure, Trafelet demanded that the Compensation Committee take steps to increase the number of shares available for grant under Alico's stock incentive plan (including seeking

shareholder approval), diluting the other members of 734 Investors and Alico's public shareholders. The Compensation Committee rejected this structure and refused to increase the share reserve under Alico's stock incentive plan after being advised by its independent advisors that doing so would be out of line with typical public company governance.

40. Trafelet was furious that the Compensation Committee refused to give in to his demands, complaining that the Compensation Committee had retained independent advisors at all. In what would prove to be a pattern, Trafelet threatened repeatedly to use his control over the 734 Investors Alico Shares to remove directors and implement his preferred compensation structure himself. Trafelet also re-traded on issues large and small throughout the negotiations. Trafelet's threats and self-interested antics—and the Compensation Committee's dogged resistance to them—caused the negotiations to drag on for months.

41. On December 31, 2016, Trafelet was named President and CEO of Alico. Slack was named as Executive Chairman and Brokaw was named Vice Chairman. All three entered into employment agreements and were granted options to purchase Alico common stock.

42. Trafelet's employment agreement (the "Employment Agreement," attached as **Exhibit B**) provided that his compensation would be largely performance-based, providing him a relatively low base salary but a large

grant of stock options. Under his Employment Agreement, Trafelet was awarded 300,000 stock options at an exercise price of \$27.15 per share (the “December 2016 Grant”). The Compensation Committee tempered this large equity grant (equal to 3.6% of Alico’s then-outstanding common stock) with vesting thresholds that required the achievement of significant performance objectives. The December 2016 Grant would vest as to 25% of the underlying options if Alico’s stock traded in any consecutive 20-day period at \$60.00 per share, \$75.00 per share, \$90.00 per share, and \$105.00 per share, respectively.

43. Trafelet and the Compensation Committee also negotiated extensively the conditions under which Trafelet could terminate his employment with “Good Reason” (*i.e.*, under circumstances constituting a constructive termination of employment). The definition of “Good Reason” in the Employment Agreement includes the following trigger (among others): “*following a Change in Control*, a material adverse change in [Trafelet’s] authority, powers, functions, titles, reporting relationship, duties, or responsibilities” (the “MAC Trigger”). A “Change in Control” includes, among other things, the replacement of a majority of the board (subject to certain exceptions).² The expanded definition of Good Reason that results from a Change in Control is significant both because of the

² The Employment Agreement incorporates by reference the definition of “Change In Control” as defined in the Alico, Inc. Stock Incentive Plan of 2015, which is attached as **Exhibit C**.

breadth of the MAC Trigger, and because changes in senior executives' duties frequently occur as a company is expanding or shifting corporate strategies, as Alico was at the time.

44. A termination by Trafelet for Good Reason provides significant and potentially lucrative benefits to Trafelet. Under the Employment Agreement (and related option agreement), if Trafelet resigned with Good Reason, he would be entitled to cash severance and the continued ability to vest into the December 2016 Grant for up to 18 months following termination of employment (if the applicable performance objectives were met). By contrast, if Trafelet resigned without Good Reason, he would receive no severance and immediately forfeit any unvested options.

45. Reflecting the significance of these benefits, Trafelet insisted strenuously on the MAC Trigger during the negotiations with the Compensation Committee, and demanded that it apply even absent a Change in Control. The Compensation Committee ultimately agreed to the MAC Trigger, but refused to remove the Change in Control condition. Trafelet furiously and reluctantly agreed.

III. Alico suffers setbacks, and Trafelet plots to extract additional value from Alico.

46. Trafelet was dissatisfied with his Employment Agreement from the moment he signed it. He complained that the Compensation Committee's arm's-length negotiation process had been "dysfunctional," one of many times

Trafelet would use that euphemism for Alico not giving him everything he wanted. Alico's stagnant stock price under Trafelet's watch did not improve his attitude or conduct. Throughout 2017, Alico's stock traded below \$35 per share—well below the lowest vesting threshold in his options from the December 2016 Grant.

47. Trafelet realized that he was unlikely to vest in his stock options from the December 2016 Grant, and that his path to extracting value from Alico through his compensation as CEO would require renegotiating his Employment Agreement. But Trafelet's Employment Agreement would not expire until after 734 Investors dissolved and, with it, his control of Alico through 734 Agriculture's position as the initial Managing Member. Trafelet thus set out to engage in a blatant self-dealing transaction: to use his control of Alico to secure a more lucrative employment arrangement for himself. Trafelet's plan was no less than to put his hand into the corporate cookie jar—and to change the Board of Alico if it did not accede to his self-dealing.

48. In the fall of 2017, Alico suffered a significant setback when Hurricane Irma devastated Alico's land and citrus assets. Trafelet used this setback as an excuse to demand reopening his compensation arrangements and receiving even more options with lower vesting thresholds, less than a year after he had entered into the Employment Agreement and received the December 2016 Grant. When informed that Alico's stock incentive plan did not contain enough

shares to award him the large quantity of additional options he demanded, Trafelet again pressed Alico to increase the number of authorized shares under the plan. When the Compensation Committee—again composed of independent directors Eisner and Krusen—concluded for a second time that doing so would not be in the best interests of Alico’s shareholders and refused, Trafelet reprised his earlier threats, claiming that he “owned” 50% of the Alico shares and could use his voting power to force through his preferred compensation structure himself. Around this same time, Trafelet told Brokaw that he wanted to replace Slack as Alico’s Chairman, which would give Trafelet additional power to push back against the Board’s resistance to his self-dealing.

49. After months of Trafelet’s threats and tirades, Slack and Brokaw preliminarily agreed that they would forfeit some of the Alico stock options they had been granted upon signing their employment agreements in December 2016, as both had assumed a reduced role at Alico following Hurricane Irma. This allowed Trafelet to be awarded additional options without further diluting the other members of 734 Investors and Alico’s public shareholders.

50. At the same time as Trafelet was negotiating for additional equity grants, he was also negotiating with Alico’s audit committee (the “Audit Committee”) over the renewal of the shared services agreement between Alico and his investment firm, Trafelet Brokaw Capital Management, L.P. (“TBCM,” and the

agreement, the “Shared Services Agreement”). The Audit Committee was composed of four independent directors: Fishman, Eisner, Krusen, and Sambuco. Under the Shared Services Agreement, TBCM provided Alico with office space and administrative support services to Traftlet, Brokaw, and Slack for work performed for Alico. During fiscal year 2017, Alico paid approximately \$564,000 to TBCM pursuant to the Shared Services Agreement.

51. In 2018, however, Traftlet decided that he would use the Shared Services Agreement as part of his plan to extract additional value from Alico. He demanded that the Shared Services Agreement be renewed for three years, and that Alico pay TBCM significantly more money—even though Traftlet was not devoting more time to Alico, and Brokaw and Slack were devoting less. The Audit Committee refused to give in to his demands. Ultimately, he and the Audit Committee agreed to a renewal of the Shared Services Agreement only through the end of 2018.

52. As with his compensation arrangements, Traftlet was furious at the result of the negotiations over the Shared Services Agreement. In conversations with directors, he again employed his favorite euphemism for Alico’s independent directors standing up to him in arm’s-length negotiations: Traftlet claimed that Alico’s governance was “dysfunctional.”

53. Meanwhile, in the spring and summer of 2018, Trafelet and the Compensation Committee negotiated the terms of an additional equity grant. Shortly after these negotiations began, Trafelet proposed at an Alico Board meeting (without advance notice to his fellow directors) that the Company discontinue its longstanding stock repurchase plan adopted pursuant to Rule 10b5-1. On information and belief, Trafelet proposed that the company discontinue its Rule 10b5-1 plan to deflate Alico's stock price and result in a lower exercise price for any additional options he received.

54. As in 2016, the negotiations between Trafelet and the Compensation Committee were extremely contentious. Trafelet attempted to use the negotiations as an excuse to renegotiate other terms of his Employment Agreement. Just like in 2016, Trafelet insisted that the MAC Trigger be amended to apply regardless of whether there was a Change in Control, allowing Trafelet to more easily terminate his employment for Good Reason. The Compensation Committee refused to renegotiate the MAC Trigger or any other provision in the Employment Agreement.

55. Trafelet also again insisted on a large equity grant with low vesting thresholds. When the Compensation Committee did not accede to his demands, Trafelet reacted with anger and petulance. Trafelet said that the Compensation Committee's proposals were "insulting," and that he would not

speak to Alico investors or perform his duties as Alico's CEO until his compensation negotiations were resolved. He again complained about the "dysfunction" of Alico's governance processes, *i.e.* the independent Compensation Committee's refusal to permit him to expropriate value from 734 Investors' and Alico's majority economic owners.

56. Throughout the compensation negotiations, Trafelet made numerous explicit and implicit threats to use his control of 734 Investors to replace Alico's directors if they did not agree to his demands. Trafelet said that 734 Investors had "restructured the business up to its shoulders, and we need to do the head." On several occasions, Trafelet bluntly told Brokaw that he would replace Alico's directors if they did not agree to his demands.

57. On September 7, 2018, Alico and Trafelet entered into a new option agreement granting Trafelet 210,000 additional options to purchase Alico stock at an exercise price of \$33.60 per share (the "September 2018 Grant," attached as **Exhibit D**). The September 2018 Grant would vest as to 25% of the options underlying the grant if Alico's stock traded for a consecutive 20-day period at \$35.00 per share, \$40.00 per share, \$45.00 per share, and \$50.00 per share, respectively. Additionally, around this same time, the Compensation Committee approved Trafelet's eligibility for an annual bonus for fiscal year 2018 of up to \$550,000, a \$150,000 increase from the prior year.

58. But Trafelet was still not satisfied. He remained angry at the Compensation Committee, the Audit Committee, and the Board for not doing exactly as he ordered. On information and belief, Trafelet began actively planning to remove Alico's directors who had resisted his transparent self-dealing. Moreover, having been frustrated in his efforts to expropriate value from Alico through his compensation and the Shared Services Agreement, Trafelet sought to generate another angle for enriching himself at the expense of the 734 Investors' other members.

IV. Trafelet conceals his plan to remove Alico directors while causing 734 Investors to trade in Alico stock

59. On September 5, 2018, Alico announced an offer to purchase up to 588,235 of its own shares at a purchase price up to \$34.00 per share through October 3, 2018 (the "Self-Tender"). Trafelet was the biggest proponent of the Self-Tender on the Board.

60. In connection with the Self-Tender, Alico filed a Schedule TO (attached as **Exhibit E**), which stated, in the Offer to Purchase contained therein: "Alico currently has no plans, proposals or negotiations that relate to or would result in . . . *any change in the present Board of Directors or management of Alico, including, but not limited to, any plans or proposals to change the number or the term of directors or to change any material term of the employment contract of any executive officer.*" This statement was included in response to an affirmative

obligation under Item 6 of Schedule TO (which requires disclosure of information required by Item 1006 of Regulation M-A). This statement was made in the initial filing on September 5, 2018, and was repeated in each of the amendments, filed on September 7, October 4, and October 9, 2018, none of which modified the statement, despite an obligation to file and disseminate an amended Schedule TO if there are material changes to the information contained therein, including under Rule 13e-4 under the Securities Exchange Act of 1934. Traftlet, on information and belief, was actively preparing and planning while the tender offer was open to change both the number and term of Alico directors, as he had previously threatened. Traftlet knowingly (or with gross negligence) nonetheless caused Alico to state that no plans were in the offing.

61. In the midst of this deficient disclosure, Traftlet, through his control of 734 Agriculture, caused 734 Investors to tender 525,052 shares to Alico (representing 6.4% of Alico's outstanding common stock). At the same time, Traftlet discussed with Alico employees the possibility of removing Alico directors and misappropriated Alico's resources by directing his subordinates to analyze and assist in his plans.

62. Traftlet emphatically insisted that his plans to remove Alico directors would, in his own words, "increase the likelihood of a proper equity valuation" in an e-mail he sent to all of the directors on November 10, 2018

(attached as **Exhibit F**). Despite Trafelet's manifest belief, and in the face of an affirmative line-item disclosure obligation with respect to material information under the federal securities laws, Trafelet willfully withheld information about his plans from the public shareholders of Alico and his fellow members of 734 Investors, whose tendering decision he controlled.

63. Trafelet stood to benefit financially if 734 Investors participated in the Self-Tender at a price below what Trafelet believed Alico's stock would trade had he disclosed his plans. Trafelet's economic interest in Alico inside the 734 Investors structure (3.7%)³ was significantly less than his economic interest in Alico outside the 734 Investors structure (14.4%). If Alico's stock price rose above the offering price, Trafelet would gain more of the upside through his Alico holdings at the exclusion of 734 Investors' other members. Thus, on information and belief, Trafelet's plan to remove Alico directors shortly after Alico engaged in the Self-Tender was yet another intentional effort to expropriate wealth from 734 Investors' other members.

64. On October 12, 2018, Trafelet and 734 Agriculture filed an amended Schedule 13D regarding their stock ownership in Alico (the "October 2018 Amended 13D," attached as **Exhibit G**). The October 2018

³ 42.7% (734 Investors Alico Shares) * 19.7% (734 Agriculture's membership interest in 734 Investors) * 43.7% (Trafelet's membership interest in 734 Agriculture) = 3.7%.

Amended 13D did not disclose that Trafelet planned to or was considering replacing Alico directors even though, on information and belief, he was actively planning to do so at this time.

V. Trafelet delivers an ineffective written consent purporting to remove four Alico directors.

65. On November 9, 2018, Trafelet demanded that Alico's Board meet that same afternoon. Although Trafelet did not request a meeting with adequate notice under Florida law, at his behest the directors (other than Slack) assembled for an informal meeting. At the meeting, Trafelet demanded that Slack, Brokaw, Eisner and Krusen resign from the Board, or he would execute written consents to remove them himself. Trafelet also threatened to appoint two new directors of his own choosing, and amend Alico's bylaws to reduce the size of the Board from seven to five directors. In an e-mail sent to all of the directors the following day (Ex. F), Trafelet attempted to justify his threats by claiming that "Alico's board and governance structure is not appropriate for a \$250mm market cap company" and that "[a]ddressing the Governance and Board of the company is long overdue" – thus effectively repeating his favorite trope that Alico's governance was "dysfunctional" (and ignoring that any dysfunction was the result of the Board's resistance to his self-dealing)."

66. Trafelet's purported reasons for removing directors were pretextual. On information and belief, Trafelet's true motives were to secure a

more pliant board that would accede to his compensation demands and permit him to exercise unfettered control over Alico. On information and belief, Trafelet also wanted to remove a majority of the directors on the Board because doing so would trigger a Change in Control under his compensation arrangements, thus providing him with access to additional compensation via the MAC Trigger if a new board attempted to rein in his self-dealing. Additionally, on information and belief, Trafelet believed that the Alico directors would not challenge his actions and would walk away from their Alico investment, allowing him to consolidate his control of Alico after 734 Investors dissolved at the end of 2019. Consistent with these motives, on or around November 10, Trafelet told Fishman and Brokaw that he wanted to run Alico indefinitely as its CEO, President, and Chairman.

67. On November 11, 2018, Trafelet followed through on his threats by delivering a document to Alico titled, “Action By Written Consent of the Majority Shareholders of Alico, Inc., a Florida Corporation, Taken Without a Meeting” (the “Purported Consent,” attached as **Exhibit H**). The Purported Consent was signed by Trafelet on behalf of 734 Investors and two funds which Trafelet controlled. The signatories purported to have the authority to collectively vote 56% of the outstanding shares of common stock of Alico, including the 42.7% of Alico represented by the 734 Investors Alico Shares. The Purported Consent was delivered by counsel claiming to represent 734 Investors, who Trafelet had

engaged without the prior written consent of the majority of the membership interests, in violation of Section 2.06(l) of the LLC Agreement.

68. The Purported Consent claimed to (i) remove Slack, Brokaw, Krusen, and Eisner from the Board, (ii) amend Alico's bylaws to reduce the number of Board members from seven to five, prohibit the directors from amending the provision of the bylaws fixing the number of directors, and provide that vacancies on the Board created by removal of directors by Alico's shareholders may only be filled by a majority vote of Alico's shareholders, and (iii) elect Joseph Schenk and John Gregorits as new Board members.

69. Under the LLC Agreement, the delivery and execution of the Purported Consent constituted (i) a "material agreement, arrangement, or understanding" between 734 Agriculture and 734 Investors or Alico and 734 Agriculture or Trafelet or their affiliates under Section 2.05(j), and (ii) a Related Party Transaction under Section 2.08. Trafelet thus did not have the authority to execute the Purported Consent on behalf of the 734 Investors Alico Shares, and the Purported Consent was invalid. Without the 734 Investors Alico Shares, the Purported Consent was plainly insufficient to authorize the actions claimed to be taken.

70. Nonetheless, had it been valid, the Purported Consent would have triggered a Change in Control under Trafelet's compensation arrangements,

enabling the MAC Trigger and an expanded definition of Good Reason. At the time Trafelet executed the Purported Consent, a resignation of his employment for Good Reason would entitle Trafelet to receive (i) cash severance of approximately \$800,000, (ii) the continued ability to vest up to 510,000 stock options if the applicable hurdles are satisfied for up to 12 months (in the case of the September 2018 Grant) or 18 months (in the case of the December 2016 Grant), (iii) \$550,000 for his fiscal year 2018 bonus, and (iv) a *pro rata* portion of up to \$1.645 million in bonuses payable in fiscal year 2019. These were material benefits to Trafelet and Trafelet's decision to effect the Purported Consent cleared the way for him to reap them. The Purported Consent was thus a self-dealing transaction in which a controlling stockholder unilaterally conferred a benefit to himself.

71. While Trafelet adopted the Purported Consent for his material benefit, it would materially harm Alico and therefore 734 Investors if valid. A removal of a majority of Alico's directors would also constitute a change of control pursuant to Alico's credit agreement with Rabo Agrifinance, Inc., dated December 1, 2014 (the "Credit Agreement."). This would result in an event of default under the Credit Agreement, providing Rabo Agrifinance the right to demand repayment of all amounts due. Trafelet willfully or with gross negligence adopted the Purported Consent notwithstanding the fact that, if valid, it would result in Alico defaulting under the Credit Agreement.

VI. The Alico Board forms the Ad Hoc Committee to consider the validity of the Purported Consent, and Trafelet attempts to shut down its deliberations by filing suit in Florida.

72. Section 17.5 of Alico's bylaws (attached as **Exhibit I**) contains numerous procedural requirements concerning the adoption of written consent by shareholders. Among other things, Section 17.5(b) provides that, "without qualification," a shareholder seeking to act by written consent "shall first request in writing that the Board of Directors fix a Written Consent Record Date for the purposes of determining the shareholders entitled to take such action." The Board may adopt resolutions setting the record date within 10 days of such a request, and may set the record date as much as ten days after the date upon which the Board adopts the resolution setting the record date.

73. On November 12, 2018, the Board met to discuss forming a committee to evaluate the propriety of the Purported Consent. Trafelet was extremely disruptive at the meeting, demanding that the Board set a record date without determining whether the Purported Consent complied with Alico's bylaws or Florida law, and insisting that the Board retroactively adopt a record date of November 11. A roll call vote was held and, following initial filibustering by Trafelet, all of the directors other than Trafelet authorized the formation of an ad hoc committee (the "Ad Hoc Committee"). The Ad Hoc Committee was empowered to take any and all actions on behalf of the Board in connection with

Article XVII of Alico's bylaws, including determining if the Purported Consent was adopted in compliance with the requirements of the bylaws and Florida law, and to set a record date. The Ad Hoc Committee was composed of Slack, Eisner, Fishman, Krusen, and Sambuco, representing all of the Alico directors other than those affiliated with 734 Agriculture.

74. On November 13, 2018, Brokaw resigned his positions at TBCM and other Trafelet-affiliated entities in response to Trafelet's actions.

75. On November 13, 2018, Trafelet and 734 Agriculture filed an amended Schedule 13D (the "November 2018 Amended 13D," attached as **Exhibit J**). The November 2018 Amended 13D stated, "The record date for [the Purported Consent] is November 11, 2018, unless another record date is set by November 21, 2018 by [Alico's] Board in accordance with [Alico's] Bylaws." Defendants thus acknowledged that the Board had until November 21 to set a record date, which under the bylaws could be up to an additional ten days beyond November 21.

76. On November 13, 2018, the Ad Hoc Committee met to discuss the validity of the Purported Consent. The Ad Hoc Committee discussed the public disclosure of the Purported Consent and various requirements that the Purported Consent must meet to be valid under Alico's bylaws. The committee adjourned pending the completion of analysis by the committee's legal counsel as to whether the Purported Consent complied with the bylaws and Florida law.

77. On November 16, 2018, Trafelet, 734 Agriculture, and the Trafelet-controlled funds that signed the Purported Consent filed a lawsuit against Brokaw, Slack, Krusen, and Eisner in the Circuit Court of the State of Florida (the “Florida Lawsuit.”). In the complaint (attached as **Exhibit K**), Trafelet styles himself and his entities as the “Majority Shareholders,” even though he holds a direct and indirect economic interest in less than 20% of Alico’s outstanding common shares, and claims that he has the “absolute right, and the power, to elect and remove the directors” of Alico. The body of the complaint does not disclose that Trafelet executed the consents on behalf of these two other entities.

78. In the Florida Lawsuit, Trafelet alleges that the prudent efforts of the Ad Hoc Committee to follow the procedures for validating shareholder consents under Alico’s bylaws were “disenfranchising” Alico’s shareholders, even though the majority economic owners of Alico did not execute (or approve the execution of) the Purported Consent. Even more remarkably, Trafelet claims that Alico’s directors “were removed” as of November 11, and that the directors’ only remaining role is “the ministerial function of setting a record date pursuant to [Alico’s] bylaws.” Trafelet’s complaint conspicuously omits that Section 17.5(b) of Alico’s bylaws permits the Board ten days to set a record date to determine the shares eligible to vote on any shareholder consent—a fact he acknowledged in the November 2018 Amended 13D—and that Section 17.5(e) requires the Board to

determine whether shareholders consents were delivered in compliance with the bylaw's procedural requirements.

79. Trafelet's filing of the Florida Lawsuit was therefore a meritless and premature effort by Trafelet to short-circuit the Ad Hoc Committee's deliberation in accordance with the bylaws and their fiduciary duties to Alico's shareholders and to prevent this Court from adjudicating the issues of Delaware law presented in this action pursuant to the exclusive forum selection provision in Section 10.04 of the LLC Agreement.

VII. The Ad Hoc Committee sets a record date, Alico's Board institutes proceedings to terminate Trafelet as CEO, and the members of 734 Investors vote to replace Trafelet as Managing Member and withdraw the Purported Consent.

80. On November 19, 2018 the Ad Hoc Committee met and unanimously resolved that (i) the Purported Consent was not properly delivered in accordance with Alico's bylaws, (ii) the actions purportedly taken by the Purported Consent as of November 11 were null and void, and (iii) the Purported Consent was deemed to include a request for the Board to determine a record date pursuant to Section 17.5(b) of the bylaws. The Ad Hoc Committee set November 28, 2018 as the record date to determine Alico's shareholders eligible to consent to the matters set forth in the Purported Consent.

81. Also on November 19, Alico's Board resolved and Alico delivered notice to Trafelet that (i) in the Board's view, his recent conduct

constituted “Cause” for termination pursuant to the Employment Agreement, the December 2016 Grant, and the September 2018 Grant, (ii) the Board would meet at a future date to consider terminating his employment for cause (at which meeting he would be entitled to be heard before the Board with counsel, in accordance with the procedural requirements set forth in the Employment Agreement and option agreements related to the December 2016 Grant and September 2018 Grant), and (iii) he was placed on administrative leave during the pendency of the termination proceedings.

82. Also on November 19, 2018, members representing 92.2% of the membership interests of 734 Investors other than those owned by 734 Agriculture or its affiliates (and 74.1% of the total membership interests) delivered written consents (attached as **Exhibit L**) (i) removing 734 Agriculture as Managing Member pursuant to Section 2.02(b) of the LLC Agreement, (ii) appointing Arlon, 734 Investors’ largest member, as the new Managing Member, and (iii) authorizing and directing Arlon to submit a written notice to Alico that 734 Agriculture was not authorized to submit the Purported Consent and that, for the avoidance of doubt, 734 Investors had rescinded and withdrawn the Purported Consent.

COUNT ONE

Declaration Pursuant to 6 *Del. C.* § 18-110

734 Agriculture was validly removed as the Managing Member of 734 Investors under Section 2.02 of the LLC Agreement.

83. Plaintiffs repeat and incorporate by reference the allegations above.

84. Section 2.02(b) of the LLC Agreement provides that 734 Agriculture may be removed as Managing Member if 734 Agriculture “commits any act that constitutes fraud, gross negligence or willful misconduct in connection with the management of [734 Investors],” and two-thirds of the outstanding membership interests other than those controlled by 734 Agriculture vote for such removal.

85. Defendants’ execution and delivery of the Purported Consent constitutes gross negligence or willful misconduct in connection with the management of 734 Investors. Defendants willfully and wrongfully adopted the Purported Consent for self-interested purposes, including to entrench Trafelet’s control of Alico, to secure Trafelet more lucrative compensation as Alico’s CEO, and to implicate the MAC Trigger in Trafelet’s compensation arrangements, all to the severe detriment of 734 Investors and its members. Defendants also willfully or with gross negligence adopted the Purported Consent despite the fact that, if valid, it would trigger an event of default under the Credit Agreement, resulting in

material harm to Alico, Alico's shareholders, 734 Investors, and the members of 734 Investors.

86. Defendants also willfully or with gross negligence, and in violation of law, approved false or misleading statements in Alico's public filings that there were no "plans or proposals that would result in: . . . any change in the present Board or management of [Alico], including any plans or proposals to change the number or terms of directors or to fill any existing vacancies on the Board," when, on information and belief, Defendants were actively planning to do so at this time. Defendants further failed to correct these filings while the Self-Tender remained ongoing, resulting in Alico submitting additional public filings with false or misleading information. Defendants also willfully or with gross negligence, and in violation of law, failed to disclose in the October 2018 Amended 13D that they intended to adopt the Purported Consent when, on information and belief, they were actively planning to do so at this time.

87. 92.2% of the outstanding membership interests other than those controlled by 734 Agriculture voted for the removal of 734 Agriculture as Managing Member.

88. Plaintiffs are entitled to a declaration that Defendant 734 Agriculture was properly removed as Managing Member of 734 Investors.

COUNT TWO

Declaratory Judgment

The Purported Consent is invalid under Section 2.05 and Section 2.08 of the LLC agreement.

89. Plaintiffs repeat and incorporate by reference the allegations above.

90. Section 2.05(j) of the LLC Agreement provides that Defendants shall not “enter into any material agreement, arrangement, or understanding” between 734 Investors or Alico and 734 Agriculture or Trafelet or their affiliates without the prior written consent of the majority of the outstanding membership interests in 734 Investors.

91. The Purported Consent, if valid, is a material agreement, arrangement, or understanding between 734 Investors or Alico and 734 Agriculture or Trafelet or their affiliates. A majority of the outstanding membership interests of 734 Investors did not give prior written consent to Defendants executing the Purported Consent on behalf of 734 Investors.

92. Additionally, Section 2.08 of the LLC Agreement states that, if Defendants engage in a Related Party Transaction, Defendants must vote all of the 734 Investors Alico Shares in accordance with the direction of a majority of the membership interests held by members other than Defendants. Defendants’ execution and delivery of the Purported Consent, if valid, was a Related Party

Transaction, and the 734 Investors Alico Shares were not voted in accordance with the direction of a majority of the membership interests held by members other than Defendants.

93. Because the Purported Consent was adopted in breach of the LLC Agreement, it is of no force and effect.

94. The existing controversy regarding the effectiveness of the Purported Consent is substantial, justiciable, and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability of the Purported Consent.

95. Plaintiffs have no adequate remedy at law.

COUNT THREE

Declaratory Judgment

The Purported Consent is invalid because it was adopted in violation of the implied covenant of good faith and fair dealing.

96. Plaintiffs repeat and incorporate by reference the allegations above.

97. Pursuant to Section 2.07(a) of the LLC Agreement and Section 1101(c) of the Delaware Limited Liability Company Act, Defendants have an implied duty of good faith and fair dealing to the members of 734 Investors. Defendants were therefore obligated to exercise their discretion as Managing

Member of 734 Investors in good faith and not engage in arbitrary or unreasonable conduct.

98. Defendants adopted the Purported Consent in bad faith to entrench Trafelet's control of Alico, to secure Trafelet more lucrative employment terms, and to implicate the MAC Trigger in Trafelet's compensation arrangements, all to the severe detriment of 734 Investors and its members. Adopting the Purported Consent was arbitrary and unreasonable, and if valid the Purported Consent will prevent the majority economic owners of 734 Investors from receiving the fruits of their bargain.

99. Because the Purported Consent was adopted in breach of the LLC Agreement, it is of no force and effect.

100. The existing controversy regarding the effectiveness of the Purported Consent is substantial, justiciable, and of sufficient immediacy to warrant the issuance of a declaratory judgment. The judgment will terminate the controversy and remove an uncertainty regarding the enforceability of the Purported Consent.

101. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

102. Plaintiffs seek the following relief:

- A. A declaration that 734 Agriculture was validly removed as Managing Member of 734 Investors.
- B. A declaration that the Purported Consent is invalid under the LLC Agreement, adopted in bad faith in violation of the implied covenant of good faith and fair dealing, and/or otherwise unenforceable in law or in equity.
- C. Costs and attorneys' fees incurred in maintaining this action; and
- D. Any other relief the Court deems proper.

POTTER ANDERSON & CORROON LLP

/s/ Berton W. Ashman, Jr.

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Dated: November 20, 2018

Attorneys for Plaintiffs

Exhibit B



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

734 AGRICULTURE, LLC,)

Plaintiff,)

v.)

C.A. No. _____

ARLON VALENCIA HOLDINGS)

LLC, 208 FLORIDA HOLDINGS,)

L.L.C., GLENN DUBIN 734)

INVESTORS GRAT, RIO VERDE)

VENTURES, LLC, RINYAMI,)

LLC, JAKE 86 LLC, ARC)

PARTNERS, LLC, ADK SOHO)

FUND LP, CRAIG M. LUCAS,)

MATTHEW BOTEIN, and)

WILLIAM C. REED II,)

Defendants,)

and)

734 INVESTORS, LLC,)

Nominal Defendant.)

VERIFIED COMPLAINT

Plaintiff 734 Agriculture, LLC, by and through its undersigned attorneys,
alleges for its Verified Complaint against the above-captioned Defendants as
follows:

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to 6 Del. C. § 18-110 ("Section
18-110"), seeking expedited relief in the form of an Order: (A) declaring the

Written Consent of the Members of 734 Investors, LLC dated November 19, 2018 (the “Invalid Written Consent”), which purports to remove Plaintiff from its position as Managing Member of 734 Investors, LLC (“734 Investors” or the “Company”), null and void; and (B) declaring that Plaintiff remains the Managing Member of 734 Investors.

2. The Company was formed to invest and hold stock in a publicly-traded Florida corporation, Alico, Inc. (“Alico”). Under the Delaware law-governed Amended and Restated Limited Liability Company Operating Agreement for the Company (the “734 Investors Operating Agreement”), Plaintiff, as the Company’s Managing Member, has sole and exclusive authority to manage the Company’s affairs. That authority expressly includes voting the Company’s shares in Alico. Plaintiff’s control was a specifically negotiated provision of the 734 Investors Operating Agreement.

3. On November 11, 2018, Plaintiff, together with other Alico shareholders, delivered an action by written consent to Alico’s Corporate Secretary (the “Alico Shareholder Vote”). Plaintiff’s participation in the Alico Shareholder Vote was authorized by the Delaware law-governed 734 Investors Operating Agreement.

4. The Alico Shareholder Vote, among other things, removed four directors from Alico's Board. Those directors are affiliated with, and influence or control, or are under the influence and control of, certain Defendants here.

5. Even before the Alico Shareholder Vote was taken, and certainly afterwards, the removed Alico Board members have engaged in a retaliatory campaign to undermine the will of Alico's shareholders. That wrongful conduct is detailed below and is the subject of litigation in Florida. This case is about the Defendants' decision to use a Delaware limited liability company to try to aid and abet the ousted Alico Board members' efforts to entrench their seats.

6. Specifically, yesterday, November 19, 2018, Defendants delivered the Invalid Written Consent to Plaintiff. The Invalid Written Consent contains false accusations that Plaintiff has acted fraudulently and has committed willful misconduct in a claimed self-interested pursuit at odds with the Company's best interests (apparently confusing board seats for individuals affiliated with Defendants on the Alico Board, which they have no contractual right to have, with 734 Investors' best interests). Nothing could be further from the truth.

7. As set forth in detail below, the Invalid Written Consent is null and void because Defendants lacked proper grounds to remove Plaintiff from its position as Managing Member. Defendants' attempt to remove Plaintiff is underpinned by baseless, bad faith character assassination that is plainly part of a

coordinated retaliation campaign to try and punish Plaintiff for Plaintiff's decision to exercise contractual rights clearly granted to it under the terms of the Company's Operating Agreement. Plaintiff seeks relief in this Court to put an end to Defendants' unlawful efforts.

THE PARTIES

8. Plaintiff is a Delaware limited liability company headquartered in New York, New York. Plaintiff's manager is Remy W. Trafelet.

9. Nominal Defendant 734 Investors is a Delaware limited liability company headquartered in New York, New York. 734 Investors was established in November 2013 and exists for purposes of making securities investments in non-party Alico, a NASDAQ-traded Florida corporation. Plaintiff has been 734 Investors' Managing Member since its inception.

10. Defendant Arlon Valencia Holdings LLC ("Arlon") is a member of 734 Investors and a signatory to the Invalid Written Consent. The Managing Principal of Arlon is Benjamin D. Fisherman, who is also a director of Alico. Arlon purports to have been named the Managing Member of 734 Investors pursuant to the Invalid Written Consent.

11. Defendant Glenn Dubin 734 Investor GRAT is a member of 734 Investors and a signatory to the Invalid Written Consent. On information and belief, Glenn Dubin 734 Investor GRAT is affiliated with Greg Eisner, an Alico

director recently removed from the Alico Board by a written consent of the holders of a majority of the Alico shares, including Plaintiff.

12. Defendant Rinyami is a member of 734 Investors and a signatory to the Invalid Written Consent. On information and belief, Rinyami is associated with Henry R. Slack, an Alico director recently removed from the Alico Board by a written consent of the holders of a majority of Alico shareholders, including Plaintiff.

13. Defendant ARC Partners is a member of 734 Investors, LLC and a signatory to the Invalid Written Consent. W. Andrew Krusen, Jr. is the Manager of ARC Partners, LLC, and was recently removed from the Alico Board by written consent of the holders of a majority of Alico shares, including Plaintiff.

14. Defendant 208 Florida Holdings, L.L.C. is a member of 734 Investors, LLC and a signatory to the Invalid Written Consent.

15. Defendant RIO Verde Ventures is a member of 734 Investors and a signatory to the Invalid Written Consent.

16. Defendant JAKE 86 LLC (f/k/a The Scott B. Kapnick 2000 Family Trust) is a member of 734 Investors and a signatory to the Invalid Written Consent.

17. Defendant ADK Soho Fund, LP is a member of 734 Investors and a signatory to the Invalid Written Consent.

18. Defendant Craig M. Lucas is a member of 734 Investors and a signatory to the Invalid Written Consent.

19. Defendant Matthew Botein is a member of 734 Investors and a signatory to the Invalid Written Consent.

20. Defendant William C. Reed III is a member of 734 Investors and a signatory to the Invalid Written Consent.

21. By the express terms of the 734 Investors Operating Agreement, Defendants are “passive investors,” and, apart from limited approval rights, have no right to “participate in the management or control of the Company, administer affairs for or in the name of the Company, sign any agreement or other document for or in the name of the Company or have any power [to] act for or on behalf of or to bind the Company.” 734 Investors Operating Agreement §§ 2.05, 2.06, 2.07(c). The sole and exclusive right to manage the Company’s affairs and vote its shares in Alico rests with Plaintiff. *Id.* § 2.01. The 734 Investors Operating Agreement is attached hereto as Exhibit A.

22. Defendants actions are direct violations of these Sections of the 734 Investors Operating Agreement and threaten Plaintiff with immediate injury by purporting to remove it from its contracted for role as Managing Member of 734 Investors.

JURISDICTION

23. This Court has subject matter jurisdiction pursuant to *6 Del. C. § 18-110*, *6 Del. C. § 18-111*, *10 Del. C. §§ 341* and *10 Del. C. § 6501*.

24. This Court has personal jurisdiction over the Defendants pursuant to Section 10.04 (Governing Law; Venue) of the 734 Investors Operating Agreement, which provides in relevant part (emphasis in original):

THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF DELAWARE WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY. The parties to this Agreement agree that jurisdiction and venue in any action brought by any party hereto pursuant to this Agreement shall exclusively and properly lie in the Delaware State Chancery Court located in Wilmington, Delaware, or (if such court denies jurisdiction) any federal or state court located in the State of Delaware. By execution and delivery of this Agreement each party hereto irrevocably submits to the jurisdiction of such courts for himself and in respect of his property with respect to such action. The parties hereto irrevocably agree that venue for such action would be proper in such court, and hereby waive any objection that such court is an improper or inconvenient forum for the resolution of such action. The parties further agree that the mailing by certified or registered mail, return receipt requested, of any process required by any such court shall constitute valid and lawful service of process

against them, without necessity for service by any other means provided by statute or rule of court. . . .

FACTUAL ALLEGATIONS

A. The Company

25. The Company was formed for the purpose of investing in and holding stock of Alico, a NASDAQ-traded Florida corporation. Alico is the largest citrus producer in the United States.

26. Through capital raised from the Company's members (including Plaintiff, the Managing Member), the Company invested in Alico and became Alico's largest shareholder. The Company has a 42.7% interest in Alico.

27. The 734 Investors Operating Agreement provides that "the powers of the Company shall be exercised solely by or under the authority of, and the business and affairs of the Company shall be managed solely under the direction of, a manager. The Members [*i.e.*, Defendants] hereby designate [Plaintiff] to act as the manager (within the meaning of [the Delaware LLC Act]) of the Company." 734 Investors Operating Agreement § 2.01. The 734 Investors Operating Agreement expressly states that, among other powers, Plaintiff has the sole power to vote 734 Investors' shares in Alico. *Id.* § 2.01(a).

28. Since November 27, 2012, Plaintiff has been managed and controlled by Mr. Trafelet, a fact known to Defendants when they agreed to appoint Plaintiff as Managing Member of 734 Investors. In addition to his control over 734

Investors' shares in Alico through his position as Plaintiff's manager, Mr. Trafelet controls another 13.3% of Alico's shares that he holds individually and through two wholly-controlled entities (together with Mr. Trafelet, the "Trafelet Shareholders"). This combination results in Mr. Trafelet controlling, in total, the voting power of 56% of Alico's shares.

B. Alico

29. In January 2017, in response to a languishing stock price, Alico embarked on an aggressive restructuring program to improve its operational efficiencies and optimize its return on assets. Around the same time, Mr. Trafelet was asked to and agreed to assume the responsibility of being Alico's President and CEO. Mr. Trafelet also sits on Alico's Board. The restructuring program, called the "Alico 2.0 Modernization Program," has been steered by Mr. Trafelet in his capacity as Alico's CEO.

30. Alico 2.0, implemented under Mr. Trafelet's stewardship, has been tremendously successful, and has transformed Alico into a more competitive and more sustainable company. The program transformed three legacy businesses into a single efficient enterprise and explored every aspect of Alico's citrus and ranch operations, including corporate and operational cost structures, grove costs, purchasing and procurement, non-performing and under-performing assets, professional fees, and human resources efficiency.

31. Alico 2.0 has included significant asset divestitures, the shutdown of businesses that were not profitable, the achievement of consistent and uniform field staffing and citrus grove operations, significant reduction in administrative expenses, and automation and simplification of administrative tasks through information technology investments. All of these changes will help Alico prosper as an important Florida corporation. The program has also included management changes, including bringing on a new President for a significant Alico subsidiary. Alico 2.0 also notably helped to mitigate a drop in share price following Hurricane Irma's devastation of Florida's citrus crops in the fall of 2017.

32. Alico 2.0's aggressive restructuring and cost-cutting measures have touched nearly every aspect of Alico except, until recently, the structure of Alico's Board.

C. Plaintiff Votes To Remove Four Alico Directors, Reduce The Size Of Alico's Board From Seven Directors To Five, And To Appoint Two New Directors To Fill The Empty Seats

33. Plaintiff and the Traftlet Shareholders concluded that continuing change was necessary to optimize, complement and complete the mission of Alico 2.0. Plaintiff and the Traftlet Shareholders believed that the Alico Shareholder Vote was necessary because the Board members' affiliations with Defendants at times have caused them to be more focused on those affiliations than on Alico and have distracted them from focusing on Alico. The Alico Board was also too large

for a company of Alico's size and laden with unnecessary and expensive executive positions and an unnecessary Executive Committee.

34. On November 9, 2018, Mr. Trafelet informed four members of Alico's Board of his intention, as controller of Plaintiff's and the Trafelet Shareholders' Alico share vote, to reduce the size of Alico's Board from seven directors to five, and to appoint two new directors to fill the empty seats that would result from either the Board members' resignations or, if resignations were not forthcoming, from an action by shareholder written consent.

35. Mr. Trafelet then asked, in his capacity as controller of Plaintiff's and the Trafelet Shareholders' Alico share vote, for the Board members to resign from the Company's Board and at the same time to join a new Strategic Advisory Board so they could continue to advise and assist the Company's success. The four Board members were asked to consider the request as necessary to help advance the Alico 2.0 strategy. Given the need to act quickly, the four Board members were asked to respond within two days.

36. The four Board members chose not to resign and Plaintiff, together with the Trafelet Shareholders, acted by written shareholder consent (the "Alico Shareholder Vote") pursuant to Florida corporate law, the Alico bylaws, and the sole and exclusive power vested in Plaintiff to vote 734 Investors' shares in Alico pursuant to the Delaware law-governed 734 Investors Operating Agreement.

37. The Shareholder Vote reduced the size of Alico's Board from seven directors to five, removed four Board members from the Board (the "Removed Directors"), appointed two new, independent directors to fill the empty Board seats created by the Removed Directors' removal, and made attendant changes to Alico's bylaws to effectuate and protect the Alico Shareholder Vote.

38. As the Alico Shareholder Vote explained:

REASONS FOR TAKING THE ACTIONS

The aim of a smaller, reconstituted Board is to identify and execute on opportunities to improve operating performance of Alico and enhance shareholder value. The Majority Shareholders believe the Board was composed of capable, distinguished directors that served in good faith. A number of the directors, however, were designees of or otherwise affiliated with other shareholders of Alico, which complicated the Board's functioning as a cohesive board of directors. We have elected two new highly qualified directors, Mr. [Joseph] Schenk and Mr. [John] Gregorits, with valuable and relevant business and financial experience who we believe will bring a fresh perspective to the Alico Board, and working together with the existing three directors, Messrs. [Remy] Trafelet, [Benjamin] Fishman and [Joseph] Sambuco, constitute a Board that from a size and composition perspective, is designed to manage effectively a company of the scale of Alico. The Majority Shareholders believe a smaller, reconstituted Board provides an effective governance framework for the Board to act decisively and efficiently to drive sustainable value creation at Alico.

39. Plaintiff believed, and continues to believe, that the time had come to right-size Alico's Board so as to provide a governance framework for a leaner Board comprised of a majority of truly independent directors who could act more decisively, more quickly, and more efficiently. The Removed Directors are

affiliated with certain Defendants in this case, and at times have been more focused on their interests as Members of 734 Investors than their obligations to Alico or have been distracted by their particular concerns as Members of 734 Investors.

40. Plaintiff believed, and continues to believe, that the Alico Board was too large and laden with unnecessary and expensive executive positions and an unnecessary Executive Committee in light of Alico's size. Plaintiff therefore executed its right, under the 734 Investors Operating Agreement, to right-size Alico's Board via the Alico Shareholder Vote and to provide an improved governance framework for the Board. Plaintiff wants the Alico Board to be able to act more decisively, more quickly, and more efficiently, and the Removed Directors, who are affiliated with certain Defendants here, were not working towards that same goal.

41. On information and belief, in the days following the Alico Shareholder Vote, other major Alico shareholders expressed support for it and the view that it was long overdue.

D. The Removed Directors And Defendants Begin A Campaign To Retaliate Against Plaintiff And Purport To Remove Plaintiff As The Company's Managing Member

42. In the lead up to and following the Alico Shareholder Vote, the Removed Directors, working together with the Defendants in this case, embarked

on a retaliation campaign designed to deprive Plaintiff of its negotiated right to vote 734 Investors' shares pursuant to the 734 Investors Operating Agreement.

43. In response to the Alico Shareholder Vote, the Removed Directors' role on the lame duck Alico Board became limited to setting a record date. (The record date is the date used to determine which shareholders are eligible to vote or give consent.) But the Removed Directors immediately made clear that they would use their positions to disrespect the will of the Alico shareholders and instead mount a campaign to obstruct and resist the Alico Shareholder Vote. On information and belief, Defendants here, including Defendants controlled by and affiliated with the Removed Directors, aided in that effort.

44. On November 12, 2018, instead of setting a record date, the Removed Directors resolved to create an "ad hoc committee" consisting of the conflicted Removed Directors, another member on the board, Benjamin D. Fishman, who controls Defendant Arlon, and another individual. The mandate of the "ad hoc committee" was to "evaluate" the Alico Shareholder Vote—a pointless exercise, given that Plaintiff and the Traftlet Shareholders constituted a clear 56% majority, which Defendants had repeatedly recognized in recent Board action and Alico's own SEC filings.

45. The conflicted Removed Directors further resolved to indemnify themselves, at Alico's expense, for decisions taken by the "ad hoc committee," and

silenced Alico and its officers and directors from communicating with investors and the public at large.

46. On Friday, November 16, 2018, Given the formation of the ad hoc committee consisting of the conflicted Removed Directors, and efforts by the Removed Directors to avoid setting the record date, Plaintiff initiated litigation against the Removed Directors in Florida seeking a declaration that the Alico Shareholder Vote is valid and binding, that the resolutions passed to create the ad hoc committee and otherwise obstruct the Alico Shareholder Vote are null and void, and that the Removed Directors are no longer members of the Alico Board.

47. The following Monday, November 19, 2018, the Removed Directors met again and resolved to reject the Alico Shareholder Vote. They also, while purporting to reject the Alico Shareholder Vote, paradoxically set a record date for the Alico Shareholder Vote for November 28, 2018 to complement their scheme of seizing control of 734 Investors. The Removed Directors also initiated a process to terminate Mr. Trafelet in his role as CEO, purportedly for cause, and shut off his access to Alico systems and email.

48. Also on November 19, 2018, Defendants, who as noted are affiliated and allied with the Removed Directors, delivered the Invalid Written Consent to Plaintiff, which purports to remove Plaintiff as the Company's Managing Member on the basis that Plaintiff "willfully breached the [734 Investors Operating

Agreement], committed multiple acts of fraud, gross negligence and/or willful misconduct in connection with the management of the Company, and breached their duties to the [Company's] Members.” Invalid Written Consent at 3. The Invalid Written Consent is attached hereto as Exhibit B. Signatures on the Invalid Written Consent are dated as early as November 16, 2018—the date the Florida litigation challenging the Removed Directors’ conduct was filed. During Plaintiff’s tenure as the Company’s Managing Member in the five years leading up to the Invalid Written Consent, none of Defendants ever suggested that Plaintiff had engaged in misconduct.

49. In addition to purporting to remove Plaintiff as Managing Member, the Invalid Written Consent purports to appoint Defendant Arlon Valencia Holdings, LLC (“Arlon”) as Managing Member. Invalid Written Consent at 4. Defendant Arlon acts through Benjamin D. Fishman, who also sits on the Alico Board and has consistently voted with the Removed Directors. The Removed Directors have also purported to appoint Mr. Fishman as acting President of Alico in Mr. Trafelet’s place.

E. Defendants Lack Proper Grounds To Remove Plaintiff As The Company’s Managing Member

50. The Invalid Written Consent makes a number of spurious accusations, and appears to have been drafted in the grossly irresponsible hope of creating

misimpressions designed to divert attention from the absence of any legal or factual support for the accusations made.

51. For example:

a. The thrust of the Invalid Written Consent is that the Alico Shareholder Vote was a “Related Party Transaction” within the meaning of the 734 Investors Operating Agreement, and therefore required Defendants’ approval. Invalid Written Consent at 1-2 (citing 734 Investors Operating Agreement § 2.08). That is incorrect for a number of reasons, including the fact that the provision (intended to apply to transactions such as asset sales between Alico and 734 Agriculture) simply does not apply to a shareholder vote such as the Alico Shareholder Vote, and the more specific provision relating to Plaintiff’s right to vote the Company’s shares in 734 Investors states unequivocally that that is a power vested solely in Plaintiff in its capacity as Managing Member. 734 Investors Operating Agreement § 2.01(a). If a vote cast by 734 Investors was a Related Party Transaction, then every routine vote case since the investment was made would have required this approval. No such approval was ever sought and none was required as this was not a Related Party Transaction.

b. The Invalid Written Consent states in several places that Mr. Trafelet stands to gain personally from the Alico Shareholder Vote, Invalid

Written Consent at 2, but the only gain sought through the Alico Shareholder Vote is a streamlined governance structure for Alico that will hopefully lead to improved efficiency and an improved share price. An improved share price would benefit Plaintiff and Defendants *equally*.

c. The Invalid Written Consent states that Mr. Trafelet will achieve enhanced severance protections under certain preexisting compensation arrangements with Alico as a result of the Alico Shareholder Vote, Invalid Written Consent at 2. In any event, Plaintiff, through Mr. Trafelet, acted without regard (one way or the other) to whatever impact the Alico Shareholder Vote may have (if any) on Mr. Trafelet's employment arrangement with Alico.

d. The Invalid Written Consent states that the Alico Shareholder Vote was taken "in bad faith" and "as a result of personal grievances." Invalid Written Consent at 2. That is not the case. Plaintiff did not act due to personality conflicts. The Alico Shareholder Vote specifically acknowledged that the Removed Directors were "capable" and "distinguishable" and had "served in good faith." This matter only became personal after the fact, when the Removed Directors and Defendants here decided to respond to the Alico Shareholder Vote with a retaliation campaign and issue the Invalid Written Consent, which stripped to its core is

nothing more than reckless, and baseless, character assassination. It is the Removed Directors who have acted as a result of personal grievances.

e. The Invalid Written Consent also claims the Alico Shareholder Vote may result in a change of control under certain of Alico's credit agreements, Invalid Written Consent at 2, but does not address the practical reality that the lenders agreed to lend to Alico knowing that 734 Agriculture and indirectly Mr. Trafelet would be the controlling person, none of which would be changed by the Alico Shareholder Vote, and that Alico's performance has improved under Mr. Trafelet's stewardship. The Alico Shareholder Vote is aimed at furthering that improvement by streamlining Alico's governance structure.

f. The Invalid Written Consent also states, falsely, that Plaintiff breached the 734 Investors Operating Agreement by causing the Company to retain Allen & Overy LLP as counsel. Invalid Written Consent at 2. Mr. Trafelet and Plaintiff retained Allen & Overy LLP as counsel to advise them in their management capacity. The Company has not retained Allen & Overy LLP as counsel. This has been made clear several times to Defendants' counsel.

g. The Invalid Written Consent faults Mr. Trafelet for failing to disclose his plans to commence the Alico Shareholder Vote to the Alico

Board. Invalid Written Consent at 3. It is unclear what standing Defendants have to complain about the timing of Plaintiff's discussions with the Alico Board about removing the Removed Directors and right-sizing the Board. In any event, the 734 Investors Operating Agreement makes clear that Plaintiff had no obligation to tell Defendants anything about Alico, 734 Investors Operating Agreement § 2.06, that Defendants are passive investors, *id.* § 2.07(c), and that Defendants waived any duties (including fiduciary duties) Plaintiff may have had to them at law or in equity, *id.* §§ 2.06(b), 8.01(a).

h. Like its "Related Party Transaction" accusation, the Invalid Written Consent seeks to shoehorn the Alico Shareholder Vote into a "material agreement, arrangement or understanding between Alico and Trafelet," despite the fact that a shareholder vote is patently not an "agreement, arrangement or understanding" and if it were the provision would have been violated by every previous shareholder vote. Again, this contention ignores the provision that specifically addresses Plaintiff's right to vote the Company's Alico shares, which vests that right solely in Plaintiff, *id.* § 2.01(a).

i. Most spuriously, the Invalid Written Consent states that Mr. Trafelet made false public statements by failing to disclose "plans or proposals to change the number or term of directors of Alico" in September

and October of this year. Invalid Written Consent at 3. This utterly false and recklessly made allegation is made both generally and with respect to a recent Alico self-tender. Plaintiff had no crystallized “plans or proposals” in advance of the discussions in November 2018. After the Alico Shareholder Vote was then taken, it was disclosed on a Schedule 13D the following day. As for the self-tender, what Defendants say is false; Defendants knew about the self-tender, which was done to pay down Company debt, ahead of time.

52. Defendants may be angry that Plaintiff acted pursuant to the 734 Investors Operating Agreement to remove their affiliates from the Alico Board, but none of them had the right to be there, and Plaintiff had every right under the plain terms of the 734 Investors Operating Agreement—terms to which Defendants agreed—to vote the Company’s Alico shares in the way that it did. Only Defendant Arlon negotiated for the right to require Plaintiff to nominate one of its designees to the Alico Board, and Defendant Arlon continues to have representation on Alico’s Board. 734 Investors Operating Agreement § 2.11. None of the other Defendants negotiated for such a right, and none of the Removed Directors affiliated with Defendants has any right to serve on Alico’s Board.

53. Nevertheless, Defendants have made the decision to step out of their role as passive investors—a role they contracted for—and make a grab at power that does not belong to them, all in order to aid and abet the Removed Directors

effort to entrench themselves on the Alico Board. Through this action, Plaintiff seeks to end Defendants' unlawful conduct, nullify the Invalid Written Consent, and clarify once and for all that Plaintiff is the Managing Member of the Company and Defendants have no right to claim otherwise.

COUNT I

(DECLARATORY JUDGMENT PURSUANT TO 6 *DEL. C.* § 18-110)

54. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

55. The Invalid Written Consent does not comply with the 734 Investors Operating Agreement. None of the reasons cited by Defendants in the Invalid Written Consent amounts to a willful breach of the 734 Investors Operating Agreement or "fraud, gross negligence or willful misconduct."

56. Accordingly, the Invalid Written Consent was ineffective to remove Plaintiff as Managing Member of the Company.

WHEREFORE, for the reasons set forth above, Plaintiff respectfully requests an Order:

A. Declaring invalid the Invalid Written Consent, which purports to (1) remove Plaintiff as Managing Member of the Company and (2) appoint Defendant Arlon as Managing Member of the Company;

B. Declaring that Plaintiff continues to be the Managing Member of the Company;

C. Declaring that Plaintiff is entitled to indemnification pursuant to Article VIII of the 734 Investors Operating Agreement for attorneys' fees and costs incurred in connection with this action;

D. Award to Plaintiff its costs, including attorneys' fees, incurred in bringing this action; and

E. Granting such other and further relief as the Court may deem appropriate.

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